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*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

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MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2005-86**  
**5 Fitzpatrick Way, Hull, MA**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Hull Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by The Hull Yacht Club (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 5 Fitzpatrick Way, Hull, MA.

**B) Procedural History**

By written notice dated June 28, 2005, the Town of Hull Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 5 Fitzpatrick Way, Hull, MA. The Appellant filed an appeal of said order on August 11, 2005. The Board held a hearing relative to this appeal on February 8, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Michael S. Hebert, Commodore/President and David W. Curry, Sprinkler Committee Ad Hoc. Appearing on behalf of the Hull Fire Department was Captain Andrew Thomas and Chief Francis Lyons.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Alexander MacLeod, Peter E. Gibbons, and John J. Mahan. Peter A. Senopoulos, Esquire, was the Legal Counsel for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse, or modify the enforcement action of the Hull Fire

Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Written Statement in Support of Appeal
3. Order of Hull Fire Department
4. Minutes of the Hull Yacht Club Annual Meeting and 2004-2005 Committee Nominations
5. Notice of Hearing to Appellant
6. Notice of Hearing to Hull Fire Department
7. Certificate of Inspection dated June 7, 2005
8. Appellant document package (pgs 1-23)

**E) Subsidiary Findings of Fact**

- 1) This building, known as the Hull Yacht Club, is a private yacht club that operates seasonally from May to October. The facility, which is unheated, is used as a place of assembly used to support a variety of activities conducted by yacht club members and their guests involved in motor boating, sailing, and boat racing.
- 2) By Notice dated June 28, 2005, the Hull Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 5 Fitzpatrick Way, Hull, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) According to the representative for the Appellant, the building is a single level wooden building, measuring approximately 78' x. 68'. The building houses a function hall. Adjoining the function hall is the Commodore's room measuring 14' x 28', and a snack bar measuring 14' x 28'. The facility covers approximately 5,300 total square feet (3,604 sq. ft inside, and a large covered porch covered consisting of approximately 1,696 sq. ft.) In addition to the snack bar, ballroom, and Commodore's room are a kitchen, men's room, ladies room, and a small office.
- 3) According to the Certificate of Inspection issued by the Town of Hull Building Department on June 7, 2005, this facility has a capacity of 212 persons and is classified as an "A-3" use group. According to said certificate the capacity of each portion of the building is as follows: "main hall-142, the commodore hall-35 and the snack bar-35".
- 4) The appellant did not submit any cost estimates for a sprinkler system, but indicated that the Hull Yacht Club is a not-for-profit organization and that paying for a system would be very difficult and would be a financial hardship.
- 5) The Appellant testified that the facility is not designed for use as a nightclub, dance hall, discotheque, bar, beer garden, drinking establishment or for similar entertainment purposes, and furthermore, indicated that the facility did not employ the characteristics typical of said aforementioned facilities. The Appellant's position is that the building's principal use is related to

those activities relating to the sport of sailing and boating. The building and related facilities provide access to club members, the boats, and a variety of activities including instructional sailing programs.

- 6) According to the Appellant, the facility hosts 4-5 member social events per season. The club also rents the club out to members and non-members on a limited basis. The club bylaws limit such rentals to no more than 2 times per month. Such events include weddings, birthday parties, anniversary parties or reunions. According to testimony, during all of these social events, live music for dancing purposes and entertainment is provided no more than 4 times during a club season. The remaining activities consist of membership meetings, subcommittee meetings and family activities such as picnics, barbecues and “just sitting on the porch and watching the water”.
- 7) The organization has been issued a seasonal license to serve alcoholic beverages and there is a separate area or portion of the building called the “Commodore’s room” that contains a service bar for serving beverages, including alcoholic beverages and light snacks. The “bar area” is used during functions and is open on Thursday, Friday and Saturday Evenings during the club season. The bar area is separated from the remaining portions of the club by a wall and a door. This bar area, as noted on the certificate of inspection, has a separate listed capacity of 35.
- 8) The representatives from the Hull Fire Department did not contest any of the testimony that was provided by the Appellant. The Department issued the order to sprinkler based upon the existence of a “bar” within the building and the fact that the club occasionally features live entertainment.

#### **F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute

and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 5) The building, which is the subject matter of this appeal, is currently designed and used for a variety of different purposes related to the activities of this organization. According to the evidence presented to this board such activities in this building appear to focus on events relating to yachting, motor boating, and the sport of sailing. However, during the past several years there have been several events that feature the “A-2 like” characteristics that this Board has determined to be typical of a nightclub, dance hall or discotheque. Such events included live music or disc jockey for dancing purposes, the service of alcoholic beverages, and concentrated occupancy. However, due to the limited frequency and occurrence of such activities, it is reasonable to conclude that these events are considered “temporary” in that they do not occur often or on a regular or routine basis. Appellants indicated that such events do not occur more than 4 times per season. The provisions of M.G.L. c. 148, s.26G1/2 (4<sup>th</sup> paragraph) allows the temporary use of such places of assembly as a nightclub, dance hall, discotheque or bar, or similar entertainment purpose without the need to install a sprinkler system if a permit is issued by the head of the fire department in consultation with the building inspector. The head of the fire department may set the terms and conditions to protect against fire and preserve public safety.
- 6) As indicated by the parties, this establishment also features a room or area that is used as a “bar”.. The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G1/2, apply to portions of a building used as public assembly with a capacity of 100 persons or more that is designed or used for occupancy as a bar. This particular area, described as the Commodore’s room, is apportioned from the other areas of the building by a wall and a door. Additionally, this particular area has a separate capacity of 35 persons. Since this “bar” area is a distinct and separate portion of the building and has a capacity of under 100 persons it is not, as currently used, subject to the sprinkler requirements

of s.26G1/2. However, this conclusion is conditioned upon this bar area, its activities and occupancy not expanding into the other portions of yacht club to such an extent that other portions of the building are being used as a “bar” unless a temporary permit for such use is issued as described above.

**G) Decision and Order**

The Board hereby **reverses** the Order of the Hull Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the building, as currently used, does not feature the “A-2 like” characteristics that are typical of a nightclub, dance hall discotheque or bar or similar entertainment purpose on a routine or regular basis. This decision is contingent upon the continued use of this particular building as described in the Board’s findings. If the appellant desires to continue to feature, on a temporary basis, “A-2 like” events, featuring music, live entertainment or dancing, after November 15, 2007, a permit is required as described herein.

**H) Vote of the Board**

Maurice Pilette, (Chairperson)	In favor
Paul Donga (Vice Chair)	In favor
Alexander MacLeod	In favor
Peter E. Gibbons	In favor
John J. Mahan	In favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Maurice Pilette, P.E. Chairman

Dated: April 12, 2006

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1<sup>st</sup> CLASS MAIL, POSTAGE PRE-PAID, TO:** Michael S. Hebert, Commodore, Hull Yacht Club, P.O. Box 796, Hull, Massachusetts 02045 **and to** Chief Francis Lyons and Captain Andrew Thomas, Hull Fire Department, 253 Atlantic Avenue, Hull, Massachusetts 02045.